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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,395	12/30/2003	Robert C. Farnan	0341-0053.01	7559

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EXAMINER

AHMED, AAMER S

ART UNIT PAPER NUMBER

3763

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,395

Applicant(s)

FARNAN, ROBERT C.

Examiner

Aamer S. Ahmed

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9,10 and 12-28 is/are pending in the application.
- 4a) Of the above claim(s) 17-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9,10,12-16 and 24-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings were received on 06/29/2006. These drawings are acceptable.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the female luer lock must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12-15 and 25-28 are rejected under 35 U.S.C. 102(b) as being unpatentable over Ginaturco (US 4,445,896) in view of Aalto et al U.S. Patent Number 4,597,758.

Gianturco discloses a vascular catheter lumen patency device comprising a cap body (10) with a first end and a second end, the cap body defining three regions comprising; a first region including an elastomeric plug (17) located at the first end of the cap body (16); a second region including a fluid storage chamber (18) located adjacent to the elastomeric plug (17) in the cap body (16); and a third region including a filter, wherein the first region is at the first end of the cap (16), the second region is in a middle of the cap (16) and the third region is at the second end of the cap (10) (see fig. 1); and wherein the fluid storage chamber (18) is filled with a fluid, the elastomeric plug (17) prevents the fluid from exiting the cap (16) through the first end, and the fluid is allowed to exit the second end of the cap (16) through the filter and through hole (21) and into the catheter lumen at a rate regulated by the through hole (21), the device further comprising

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a self-sealing port (col. 2 line 60) located in the plug (17), wherein the through hole (21) is located within a male luer lock (23) which combines with a female luer lock (13).

Furthermore, Gianturco discloses that the fluid is an incompressible liquid (see abstract), the fluid storage walls are elastomeric (col. 2 line 67) and the fluid storage area is a separate member inserted in the cap body (16, see fig. 1).

Gianturco fails to disclose a fluid permeable filter in the third region nor that the plug is cylindrical.

Applicant has not disclose that the specific cylindrical shape solves any problem or is for any stated purpose.

Therefore it appears that the plug would perform equally well with the shape as stated by Gianturco or any shape. Accordingly, the use of a cylindrical shaped plug is deemed to be a design consideration which fails to patentably distinguish over the prior art of Gianturco.

Aalto et al discloses a similar device with a fluid permeable filter (26).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Gianturco by incorporating the filter of the kind taught by Aalto et al in order to restrict the flow of fluid.

Claims 16, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianturco and Aalto et al in view of Doyle.

Gianturco and Aalto et al discloses the device as described above in reference to claim 12.

Gianturco and Aalto et al fails to disclose that fluid N₂.

Doyle discloses a similar device in which N₂ is used to pressurize a chamber (col. 11 line 29)

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Gianturco in view of Aalto by incorporating N₂ gas in the fluid chamber as taught by Doyle in order supplement the normal resiliency of plug (col. 11 line 29).

Response to Arguments

Applicant's arguments filed 06/29/2006 have been fully considered but they are not persuasive.

Applicant submits that Gianturco does not have first, second and third regions as recited in the instant claims, however as described above these regions are present in Gianturco.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aamer S. Ahmed whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Ahmed



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